ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
End User Common Line Charges	)	CC Docket No. 95-72

TO: The Commission

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

Bradley Stillman
Don Sussman
Alan Buzacott

MCI Telecommunications
Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006

August 18, 1997

Summary

Many of the issues raised in the numerous petitions for reconsideration stem from the fact that the FCC has chosen to apply a market-based approach to access reform rather than ordering access charges down to forward-looking economic cost using a prescriptive method. For instance, issues regarding the different level of PICC charges for different classes of customers can be traced to the First Report and Order's failure to drive interstate access down to true cost. In addition, many of the numerous administrative questions surrounding the assessment and collection of the PICCs can be traced back to reliance on the market-based approach to access reform as well. Finally, the questions raised regarding treatment of the TIC under the Commission's new framework for interstate access in the various petitions for reconsideration can similarly be traced to the failure to eliminate the excess from interstate access charges.

In light of the decision by the 8th Circuit to vacate the Commission's Order on local competition, and as a way to render many of the issues raised in the petitions for reconsideration moot, the Commission should now reverse its decision to rely on the market-based approach to access reform. Instead, the Commission should order prescriptive reductions to bring interstate access charges down to their true forward-looking economic cost.

As Sprint notes in its petition, "IXC's will need to know on a customer by customer basis, how many PICCs, and what kind of PICCs, are being assessed for each of their prescribed customers." As incumbent LECs become both suppliers and competitors to IXC's in their home regions, the ability to audit bills become increasingly important. The same methods of calculation and assessment should be employed by all LECs across the country to preserve consistency and ease administrative burdens.

It is important both to discourage anti-competitive impacts and for ease of administration for the PICC to be collected in arrears. Such collection would be consistent with the manner in which the common carrier line charge (CCL) which the PICC is replacing is recovered from IXCs. It is also consistent with the way in which the 53 cent per line universal service assessment is currently collected from IXCs. Payment in advance would effectively force the IXC's to pay PICC up front for customers they may or may not retain in the following month.

The Order's reassignment of revenues currently recovered through the TIC does not comply with the CompTel court's instructions. The Commission has plainly failed to demonstrate that its treatment of the residual TIC constitutes "cost-based ratemaking." Indeed, the Commission admits that it is unable to identify a cost basis for the revenues associated with the residual TIC. The Commission's approach of "targeting" X-factor reductions to the residual TIC is not a solution; its true effect is to spread the TIC revenues among all the access elements and deny normal rate reductions from the price cap.

Not only is absence of a cost basis for transferring the TIC revenues to other rate elements contrary to CompTel, but it will undermine the market-based approach upon which the Commission purports to rely. The Commission should comply with the CompTel decision and reconsider the provisions of the First Report and Order that permit the LECs to continue recovering those components of the TIC that are not justified by "cost-based ratemaking principles." At a minimum, the Commission should reconsider the "targeting" mechanism that arbitrarily reassigns TIC revenues to the local switching and common line baskets.

MCI continues to support setting the tandem-switching rate at TELRIC as part of a prescriptive approach that sets all access rates at TELRIC. However, if the Commission adopts the suggestion to set the tandem switching alone at TELRIC, the LECs should not be permitted

to recover the difference between TELRIC and the tandem switching revenue requirement through other rate elements.

MCI supports the retention of a unitary structure, to eliminate the sensitivity of an individual IXC's access costs to LEC tandem placement.

The Commission should clarify that only TIC components that will not subsequently be reassigned to other rate elements may be recovered through the PICC, and should also clarify that the "TIC exemption" applies to the per-minute TIC in its entirety -- both residual and facilities-based components.

Any limitations on the NRC waiver are contrary the policy objectives that underlie the rate structure changes prescribed by the First Report and Order. Restricting the NRC waiver would limit market-based responses to the tandem rate structure changes prescribed by the First Report and Order and thereby defeat the Commission's objectives.

The Commission should apply a fresh look policy to term plans for tandem switched transport. As the Commission noted in the expanded interconnection proceeding, term plans "tend to lock up the access market, preventing customers from obtaining the benefits of the new, more competitive interstate access environment." IXCs should not be penalized for reconfiguring their networks in response to the First Report and Order's rate structure changes.

The current rule, which permits exogenous treatment of universal service contributions of incumbent LEC universal service obligations simply violates the 1996 Act which requires that universal service subsidies be made explicit. Permitting incumbent LECs to effectively collect these monies from their IXC customers by permitting them to be buried in access charges is an entirely new implicit subsidy and is not competitively neutral. Furthermore, by artificially inflating the cost of long distance services, the order takes steps which run counter to its stated

goal of making the access system more economically rational.

Since this fund is financed by interstate providers, and ostensibly reflects the universal service subsidy implicit in interstate access charges, it is only logical that the interstate universal service subsidy be targeted to reduce the interstate revenue requirement of incumbent LECs.

MCI supports the User Parties' and CompuServe's request that the Commission extend the one-year transition period until July 1, 2000.

The Commission should dismiss the Rural Telephone Companies request that access charges be applied to unbundled network elements. The Commission's ruling is correct and should not be reversed. Moreover, the Commission has already reviewed its decision in response to the Request for Stay filed jointly by Pacific Bell, Nevada Bell, and Southwestern Bell Telephone Company on June 3, 1997. Thus, the Commission correctly determined that since incumbent LECs are not providing access when they provide unbundled network elements to CLECs, they may not assess access charges on those elements.

MCI agrees with AT&T that the incumbent LECs are already fully recovering their local switching costs through the local switching element, and therefore, should not be permitted to double-recover such costs by also charging a trunk port charge when a CLEC purchases unbundled network elements.

USTA's plan allowing incumbent LECs to recover marketing expenses through a PICC, and then through originating and terminating per minute charges would create a situation in violation of the Commission's long-standing cost-causation recovery principles. First, USTA has provided no new evidence to support its claims and the Commission was correct that it the playing field is not level if incumbent LECs are permitted to recover their marketing costs from IXCs, and IXCs and other new entrants are also forced to pay for their own marketing costs.

Table of Contents

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
End User Common Line Charges	)	CC Docket No. 95-72

TO: The Commission

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation respectfully submits these comments in response to the petitions for reconsideration and clarification filed in the above referenced dockets. In several important areas, the First Report and Order fails to meet the statutory obligations and goals of the 1996 Act as well as the remand in the CompTel case. These issues, including maintaining implicit subsidies for universal service by permitting an exogenous adjustment to the LEC price cap, treatment of the TIC and ultimately the reliance on the "market-based" approach have been raised directly and indirectly in petitions for reconsideration of this order.

I. The FCC Must Reverse the Use of the Market-based Approach in Light of the 8th Circuit Decision

Many of the issues raised in the numerous petitions for reconsideration stem from the fact that the FCC has chosen to apply a market-based approach to access reform rather than ordering

access charges down to forward-looking economic cost using a prescriptive method. For instance, issues regarding the different level of PICC charges for different classes of customers can be traced to the First Report and Order's[1] failure to drive interstate access down to true cost.[2] In addition, many of the numerous administrative questions surrounding the assessment and collection of the PICCs can be traced back to reliance on the market-based approach to access reform as well.[3] Finally, the questions raised regarding treatment of the TIC under the Commission's new framework for interstate access in the various petitions for reconsideration can similarly be traced to the failure to eliminate the excess from interstate access charges.[4]

MCI and others raised serious concerns about the impact of such a policy on the provision of unbundled network elements and the impact of effectively delaying the access reductions due consumers. However, the Commission decided to pursue the goal of driving interstate access prices down to economic cost by relying primarily upon the framework it established in the 251 Order.[5] In short, the Commission wanted to use the development of local

---

[1]In the Matter of Access Charge Reform, CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Transport Rate Structure and Pricing, CC Docket No. 91-213, End User Common Line Charges, CC Docket No. 95-72 (released May 16, 1997). ("First Report and Order")

[2]See e.g., Los Angeles County Petition, Call America Petition at 2-7, Telecommunications Resellers Association Petition at 6-12, CompTel Petition at 2-6, ICA Petition at 3-4.

[3]See e.g., Sprint Petition at 1-7, USTA Petition at 4.

[4]See e.g. Frontier Petition at 8-13, Worldcom Petition at 2-8, CompTel Petition at 7-15, TCG Petition at 2-4.

[5]See CC Docket 96-262, Comments of MCI at 7-14. See also Comments of NARUC, Group of State Consumer Advocates, American Association of Retired Persons, Consumer Federation of America and Consumers Union, Florida Public Service Commission, and Public

competition through the provisioning of unbundled network elements to drive down interstate access rates.[6] In light of the decision by the 8th circuit to vacate the Commission's Order on local competition,[7] and as a way to render many of the issues raised in the petitions for reconsideration moot, the Commission should now reverse its decision to rely on the market-based approach to access reform.[8] Instead, the Commission should order prescriptive reductions to bring interstate access charges down to their true forward-looking economic cost.

MCI believes the Commission's authority to establish rules and pricing guidelines for unbundled network elements under section 251 of the 1996 Act will ultimately be upheld. However, relying on local competition -- and specifically unbundled network elements -- to

---

Utility Commission of Texas.

[6]See e.g, First Report and Order at ¶42. ("To fulfill Congress's pro-competitive mandate, access charges should ultimately reflect rates that would exist in a competitive market...[C]ompetition or, in the event that competition fails to develop, rates that approximate the prices that a competitive market would produce, best serve the public interest.") See also, Id. at ¶48. ("We are confident that the pro-competitive regime created by the Act and implemented in the *Local Competition Order* and numerous state decisions will generate workable competition over the next several years in many cases, and we would then expect that access price levels to be driven to competitive levels.")

[7]Iowa Utilities Board v. Federal Communications Commission, et. al., 96-3321, Filed July 18, 1997, 8th Circuit.

[8]MCI notes that the Administration also has serious concerns about the effectiveness of the market-based approach and urged the Commission to make it contingent and be prepared to order further prescriptive reductions. The actions of the incumbent LECs along with the 8th Circuit decision makes the prescriptive reduction contingency necessary and appropriate. National Telecommunications and Information Administration (NTIA) noted in its comments that "[c]ontinuation of any market-based approach past January 1, 1998, however, must be contingent upon the incumbent LECs' full compliance with their obligations under the 1996 Act to interconnect with competing providers or to provide them with operational unbundled network elements on just, reasonable, and nondiscriminatory terms." Letter of Larry Irving to Chairman Hundt, April 24, 1997.

deliver access reductions that the Commission admits are necessary and would come if interstate access were based on cost is certainly not appropriate so long as the Commission's authority over the pricing and provisioning of unbundled network elements is in question. In any case, it will be some time before the question of the Commission's authority over the pricing and provisioning of unbundled network elements will be settled and consumers should not be denied the access reductions to which they are entitled while incumbent LECs continue to reap monopoly profits in the interim.[9] In short, maintaining the market-based approach under these circumstances makes the anti-competitive concerns identified by MCI and others loom even larger. There can be no legitimate jurisdictional argument over the Commission's authority to establish cost based rates for interstate access and MCI urges the Commission to take this opportunity to do just that.

II. The Commission Must Clarify Numerous Issues Regarding the Assessment and Collection of PICCs Immediately if the Restructuring is to Take Place By January 1, 1998.

Like Sprint, MCI has serious concerns about its ability to audit and bill its customers for

---

[9]MCI is aware that the Commission believes that a transition from current bloated interstate access rates to rates based on forward-looking economic costs is warranted and that reliance on the development of local competition through unbundled network elements is one way to provide a "transition." See, First Report and Order at ¶46. ("...[W]e are concerned that any attempt to move immediately to competitive prices for the remaining services would require dramatic cuts in access charges for some carriers. Such an action could result in a substantial decrease in revenue for incumbent LECs, which could prove highly disruptive to business operations...") MCI continues to question the effectiveness of this policy and believes these concerns are not warranted in light of the excessive earnings of the incumbent LECs. In any case, MCI maintains this is not a legitimate reason for allowing these companies to continue to overcharge for these services. However, a modest transition could be done in association with prescriptive reductions ordered as part of the reconsideration of this decision if the Commission still believes a transition is necessary.

the primary interexchange carrier charges (PICCs). The time necessary for development of these functions and the costs associated with it are significant and the January 1, 1998 deadline for implementation will be extremely difficult to achieve. The Commission must help facilitate this process by clarifying the following information regarding the PICC immediately.

A. Billing of PICCs Must Be in Arrears and Pro-rated

It is important both to discourage anti-competitive impacts and for ease of administration for the PICC to be collected in arrears. Such collection would be consistent with the manner in which the common carrier line charge (CCL) which the PICC is replacing is recovered from IXCs. It is also consistent with the way in which the 53 cent per line universal service assessment is currently collected from IXCs. In addition, if this charge were to be collected in advance, it could force IXC's in effect to double pay during the first month of transition from the old system of CCL to the PICC.[10] Even if the double payment problem could be overcome, payment in advance would effectively force the IXC's to pay PICC up front for customers they may or may not retain in the following month.

Assessment in advance has not been a concern in the local market with respect to the SLC because there are no competitive alternatives for local. In the competitive long distance industry where tens of millions of customers switch carriers each year, billing in advance can have a very serious anti-competitive impact on carriers that are losing more customers than they gain in a

[10]The potential double payment can be avoided as follows: CCL for December 1997 will be collected during January 1998. While the PICC structure is scheduled to go into effect on January 1, 1998, billing should not begin until February 1, 1998. Furthermore, many LECs use billing cycles that run in the middle of a given month, the Commission must make sure that the transition from CCL to PICC billing is synchronized to prevent double payment.

given month. Furthermore, if incumbent LECs actually begin to comply with the 1996 Act's requirements for opening their local markets and meet the test for in-region long distance entry, they would be unfairly advantaged because for every customer they gain a PICC will have been billed to another IXC. For these reasons, PICCs should also be pro-rated based on the number of days in a given month that the consumer is served by a particular IXC.

Pro-rated billing is consistent with the manner in which IXC's are currently billed for special access. Incumbent LECs issue a partial month credit when a special access circuit, which has been paid for in advance, is disconnected in the middle of a month. However, the true-up model would not be effective with the PICC because of the massive amount of churn in the long distance market. MCI believes the most pro-competitive and least administratively burdensome policy would be to bill the PICC in arrears and pro-rate payment based on the number of days a customer is presubscribed to a particular IXC.

B. PICC Billing Must Be Auditable

The structure for PICC billing outlined above will also help alleviate concerns about the ability to audit incumbent LEC bills to IXCs. As Sprint notes in its petition, "IXC's will need to know on a customer by customer basis, how many PICCs, and what kind of PICCs, are being assessed for each of their prescribed customers."[11] As incumbent LECs become both suppliers and competitors to IXC's in their home regions, the ability to audit bills become increasingly important. The same methods of calculation and assessment should be employed by all LECs across the country to preserve consistency and ease administrative burdens.

---

[11]Sprint Petition at 3.

In addition to billing PICCs in arrears and on a pro-rated basis, at minimum, the Commission should make clear that LEC bills for PICCs should include the following:

- aggregate line counts by class of customers;
- line level detail for each billed telephone number, including all other telephone numbers associated with the billed telephone number;
- identification of the class of customer for each line (if a company does not have all lines of a multiline customer PIC'd to it, it must also have the primary billed telephone line information);
- the date the line was PIC'd to each IXC;
- the date the PIC changed (if applicable);
- trunk level detail with the same information as listed above for lines;
- level of SLC assessed on a per line basis (for comparison to the PICC for that line);

In addition, PICC charges billed separately from switched and special access charges using the CABs process.

Sprint also raises the difficult issue of who determines which line in a multiline residential household is primary and which is not.[12] MCI agrees that simply designating the first installed line as primary will create numerous problems, including those identified by Sprint with respect to universal service fund eligibility and competitive concerns. There are others as well, including assessing the proper fees for multifamily households and making assessments for customers that have multiple lines installed simultaneously. MCI believes these concerns make

[12] Id. at 5.

customer selection the most workable option. While problems of gaming the system are likely to persist so long as these charges are above forward-looking cost, putting the decision in the hands of the customer is a better alternative than putting the decision in the hands of an actual or potential competitor. In the alternative, as a way to minimize gaming of the system to maximum extent possible the Commission could require that the first line subscribed to any local exchange carrier is primary with all other lines subscribed to that company considered non-primary.

III. TIC and Tandem Switched Transport Issues

A. The First Report and Order Does Not Comply With CompTel Remand

Several petitioners have identified issues associated with the Commission's reassignment of costs from the TIC to tandem-switched transport. First, petitioners argue that the tandem switched transport rate will be inflated unreasonably by the Commission's decision to base tandem switching rates on the tandem switching revenue requirement.[13] Second, petitioners note that the cost of tandem switched transport will also be inflated by the adoption of the three-part rate structure.[14]

Both of the arguments raised by petitioners are valid. However, the unreasonable increase in tandem switched transport rates is only a symptom of a larger failing of the First Report and Order -- the Order's reassignment of revenues currently recovered through the TIC does not comply with the CompTel court's instructions. In CompTel, the court concluded that the Commission had not justified the TIC and instructed the Commission to "move expeditiously

---

[13]See, e.g., CompTel Petition at 7-9; Frontier Petition at 8-12.

[14]See, e.g., Telco Petition at 4-7; Worldcom Petition at 11-17.

to a cost-based alternative to the TIC, or to provide a reasoned explanation of why a departure from cost-based ratemaking is necessary and desirable in this context."[15]

The Commission has plainly failed to demonstrate that its treatment of the residual TIC constitutes "cost-based ratemaking." Indeed, the Commission admits that it is unable to identify a cost basis for the revenues associated with the residual TIC.[16] The Commission's approach of "targeting" X-factor reductions to the residual TIC is not a solution; its true effect is to spread the TIC revenues among all the access elements. Instead of declining in price as they normally would through the workings of the price cap system, the prices of traffic sensitive, common line, and trunking basket rate elements (other than the TIC) will remain frozen at their current levels until no revenues are being recovered through the residual TIC. The Commission has articulated no satisfactory basis for shifting the recovery of TIC revenues to these rate elements.

Not only is absence of a cost basis for transferring the TIC revenues to other rate elements contrary to CompTel, but it will undermine the market-based approach upon which the Commission purports to rely. By any measure, there is almost no competitive source of supply for local switching or common line services. Yet, the effect of "targeting" the TIC is to allow the LECs to shelter a large fraction of the current TIC revenue in the local switching and common line baskets. For example, in the July 1, 1997 annual access filings, about $570 million in

---

[15]Competitive Telecommunications Association v. FCC, 87 F.3d 522, 532 (D.C. Cir. 1996).

[16]First Report and Order at ¶230 ("We have reallocated those costs that the record shows are clearly related to other facilities-based elements. The upcoming separations proceeding may provide additional data that will permit us to reallocate more costs to facilities-based rate elements, or to the intrastate jurisdiction.")

reductions that would otherwise have been targeted to the common line basket and about $230 million in reductions that otherwise would have been targeted to the traffic sensitive basket were used to reduce the TIC. That this outcome is of incalculable benefit to the LECs is shown by NYNEX's recent petition for a stay of the First Report and Order, in which NYNEX complained that it would not have the same opportunity to shelter its TIC revenues as other LECs.[17] The Commission justifies the spreading of TIC costs on the grounds that "it does not offer TIC revenues special insulation against the pressures of the competitive marketplace, as would some proposals to bulk-bill the TIC to IXCs."[18] The fact that there were worse alternatives does not transform "targeting" into cost-based ratemaking.

Further, there is no reason to believe that the Commission's approach constitutes cost-based ratemaking even for the "facilities TIC" -- the TIC components that the Commission has explicitly assigned to other rate elements. For example, there is considerable evidence in the record that the "tandem revenue requirement" bears little or no relationship to the cost of tandem switching.[19] In addition, as several petitioners have noted, the Commission had to make questionable assumptions in order to justify the three-part tandem-switched transport structure.[20] It is clear, therefore, that the Commission has complied with the CompTel court's instructions regarding the pricing of tandem switched transport, especially the requirement that "the overhead

---

[17]NYNEX Petition for Stay Pending Judicial Review, July 23, 1997, at 13-14.

[18]First Report and Order at ¶231.

[19]See, e.g., CompTel Petition at 7-9.

[20]See, e.g., Worldcom Petition at 12-14.

assigned to the tandem switch component must be supported upon the basis of cost."[21]

By maintaining the TIC, either as the per-minute residual TIC or incorporated into other rate elements, the Commission has provided the incumbent LECs with a continued source of subsidy. As MCI noted in its initial comments, above-cost pricing of interstate access enables LECs that are active in both the local and interexchange markets to engage in a price squeeze.[22]

The Commission should comply with the CompTel decision and reconsider the provisions of the First Report and Order that permit the LECs to continue recovering those components of the TIC that are not justified by "cost-based ratemaking principles." At a minimum, the Commission should reconsider the "targeting" mechanism that arbitrarily reassigns TIC revenues to the local switching and common line baskets. Recovery of the TIC revenues through LEC transport would at least be consistent with longstanding Part 36 and Part 69 rules.

B. Piecemeal "Solutions" Are Unsatisfactory

1. All Elements Should Be Priced at TELRIC, Not Just Tandem Switching

Several petitioners suggest that the Commission should consider requiring incumbent LECs to price tandem switching at TELRIC.[23] MCI continues to support setting the tandem-switching rate at TELRIC as part of a prescriptive approach that sets all access rates at TELRIC. However, if the Commission adopts the suggestion to set the tandem switching alone at TELRIC,

---

[21]CompTel, 87 F.3d at 533.

[22]MCI Comments at 41.

[23]See, e.g., CompTel Petition at 15.

the LECs should not be permitted to recover the difference between TELRIC and the tandem switching revenue requirement through other rate elements. Under the First Report and Order's approach, any non-TELRIC portion of the tandem switching revenue requirement that remained in the TIC would be reallocated to other rate elements through the targeting mechanism. This arbitrary reassignment of tandem switching costs would not constitute "cost based ratemaking" any more than the First Report and Order's current approach. Accordingly, the Commission should not address the cost of tandem switching in isolation, but should set all access rates at TELRIC levels.

2. Retention of the Unitary Structure

MCI supports the retention of a unitary structure, to eliminate the sensitivity of an individual IXC's access costs to LEC tandem placement. However, if the Commission retains its current approach to reassigning TIC costs, tandem switched transport under the unitary structure should be priced to recover the same revenues as would be recovered under the three-part structure. Without this restriction, any differential would remain in the TIC and subsequently be recovered arbitrarily to a range of other rate elements. Once again, the Commission should not address each of the many problems caused by its reassignment of TIC costs in isolation, but should set all access rates at TELRIC levels.[24]

C. Assessment of the TIC on CAP Transport

1. Some Parties Misinterpret the "TIC Exemption"

[24]In the event the Commission decides against reinstituting the 9000 minute assumed usage for pricing tandem transport, the incumbent LECs must demonstrate that they are not over provisioning circuits to achieve lower minutes per circuit and therefore higher rates.

In its petition, RCN makes the assumption that the TIC exemption "is limited to the 'residual' TIC and does not apply to the costs that will remain in the TIC over the next three years while those costs are being reallocated to other rate elements."[25] This assumption is at odds with the plain language of the First Report and Order. The Commission's conclusion that CAP customers do not have to pay the TIC is based on the observation that "if the incumbent LEC's transport rates are kept artificially low and the difference is recovered through the TIC, competitors of the incumbent LEC pay some of the incumbent LEC's transport costs."[26] The incumbent LEC's transport costs clearly include the "costs that will remain in the TIC over the next three years" -- the tandem switching revenue requirement. Thus, the reasoning that underlies the TIC exemption requires that customers of CAP transport be exempted from paying the costs associated with tandem-switching.

NYNEX's arguments in its recent Petition for Stay Pending Judicial Review are based in part on a similar misinterpretation of the TIC exemption provisions of the First Report and Order. NYNEX assumes that the LECs will be permitted to shelter all TIC components in the PICCs, not just the unidentified residual revenues.[27] However, new Section 69.153(a) of the Commission's rules provides that only "residual interconnection charge" revenues may be recovered through the PICCs. The Order defines "residual interconnection charge" as the amount computed "by excluding revenues that are expected to be reassigned on a cost-causative

[25]RCN Petition at 9.

[26]First Report and Order at ¶240.

[27]NYNEX Petition for Stay, Affidavit of Frank J. Gumper at 2.

basis to facilities based charges in the future, pursuant to the transition plan described in this Order."[28] The tandem switching revenue requirement component of the TIC is "expected to be reassigned on a cost-causative basis to facilities based charges in the future" and is therefore not considered part of the "residual TIC". Thus, pursuant to Section 69.153(a), the tandem switching revenue requirement may not be recovered through the PICCs.

Moreover, there would be no justification for recovering the tandem switching revenue requirement through the PICCs, even on a temporary basis. Tandem switching costs clearly constitute transport costs, and, consistent with the reasoning that underlies the TIC exemption, should be recovered exclusively from users of LEC transport.[29] In addition, the rule permitting certain TIC costs to be recovered through the PICC is based on the Commission's conclusion that these residual TIC amounts were likely non-traffic sensitive.[30] It would be economically inefficient to permit the recovery of tandem switching costs, which are largely traffic sensitive, through the PICCs.

The Commission should clarify that only TIC components that will not subsequently be reassigned to other rate elements may be recovered through the PICC, and should also clarify that the "TIC exemption" applies to the per-minute TIC in its entirety -- both residual and facilities-based components.

---

[28]First Report and Order at ¶235.

[29]See First Report and Order at ¶240 (". . . . if the incumbent LEC's transport rates are kept artificially low and the difference is recovered through the TIC, competitors of the incumbent LEC pay some of the incumbent LEC's transport costs.")

[30]First Report and Order at ¶239.

2. The TIC Exemption Applies Immediately

TCG and AT&T request that the Commission clarify that the TIC exemption is effective immediately.[31] As TCG and AT&T note, new Section 69.155 of the Commission's rules, read in conjunction with the June 4, 1997, Errata, could be interpreted as deferring the effective date of the TIC exemption to be January 1, 1998. The Commission should clarify or, if necessary, reconsider the First Report and Order.

In the First Report and Order, the Commission concludes that its "current policy, which requires competitive entrants to pay the TIC even in cases where it provides its own transport, is inconsistent with the procompetitive goals of the 1996 Act. We therefore modify our rules to permit incumbent LECs to assess any per-minute residual TIC charge only on minutes that utilize incumbent LEC transport facilities, and not on any switched minutes of CAPs that interconnect with the incumbent LEC switched access network at the end office."[32] Nothing in this discussion of the TIC exemption indicates that the Commission intended to defer the effective date to January 1, 1998. Further, having concluded that the assessment of the TIC on CAP transport is inconsistent with the goals of the 1996 Act, there is no basis for the Commission to defer the effective date of the TIC exemption. The Commission should clarify as soon as possible that CAPs do not have to pay the TIC.

D. The Commission Should Clarify the Waiver Provisions

Worldcom requests that the Commission clarify that incumbent LECs must waive

---

[31]AT&T Petition at 10-11; TCG Petition at 2-4.

[32]First Report and Order at ¶240.

reconfiguration non-recurring charges (NRCs) that apply if customers decide to shift traffic from incumbent LEC networks to competitive access providers' networks.[33] Similarly, several IXCs request that the Commission clarify that the NRC waiver apply when IXCs move their POP closer to the tandem.

Any limitations on the NRC waiver are contrary the policy objectives that underlie the rate structure changes prescribed by the First Report and Order. The rate structure changes, including the repricing of tandem switched service, are intended to send accurate pricing signals and encourage efficient competition. Restricting the NRC waiver would limit market-based responses to the tandem rate structure changes prescribed by the First Report and Order and thereby defeat the Commission's objectives.

E. Fresh Look

TCG requests that the Commission reconsider and modify the First Report and Order to institute a "fresh look" for local transport rearrangements.[34] In the expanded interconnection proceeding, the Commission limited termination liabilities to the difference between the amount the customer had already paid and any additional charges that the customer would have paid for service if the customer had taken a shorter term corresponding to the term actually used.[35]

The Commission should apply a similar fresh look policy to term plans for tandem switched transport. As the Commission noted in the expanded interconnection proceeding, term

---

[33]Worldcom Petition at 19-20.

[34]TCG Petition at 4-6.

[35]In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, 7463.

plans "tend to lock up the access market, preventing customers from obtaining the benefits of the new, more competitive interstate access environment." At a minimum, the Commission should institute a ceiling on the termination liabilities that may be assessed when IXCs discontinue over provisioned trunks. IXCs should not be penalized for reconfiguring their networks in response to the First Report and Order's rate structure changes.

IV. Universal Service Issues in the First Report and Order

A. Incumbent LECs Should Be Required to Apply the Productivity Factor to USF Contributions

USTA argues in its petition for reconsideration that the recovery of USF costs should not be reduced due to the application of the productivity factor because the productivity factor has no impact on USF contributions.[36] USTA states that if the productivity factor is applied to USF contributions, then incumbent LECs will not have a legitimate opportunity to obtain full recovery of their USF contributions.[37] The Commission should reject USTA's contention.

In the past, access services have included implicit universal service subsidies which have been targeted by the productivity factor. USTA has provided no evidence to support its contention that these contributions should now be excluded, simply because they have been explicitly identified. Nor has USTA explained why its USF contribution should be treated differently from any other exogenous change.

Other payers into the fund, such as IXCs and CLECs, will have to pay a larger share of the fund then the LECs, without any guarantee of being able to pass through any of their

---

[36]USTA Petition at 5.

[37]Id.

universal service obligations in higher prices. Allowing the LECs to remove their universal service contributions from the price caps will merely serve to insulate the LECs further from the same discipline on their costs required of other contributors. The Commission should not adopt USTA's proposal.

B. The Universal Service Fund Should Be Made Competitively Neutral

Under the Commission's rules, the incumbent LECs can pass through their universal service contributions to IXCs and CLECs entering a market using resale, since their contributions to the universal service fund is an exogenous cost under price caps. Consequently, IXCs and CLECs will pay both their own contribution and the incumbent LECs contribution. MCI agrees with AT&T's petition for reconsideration that this rule must be changed to ensure that all industry segments contribute to universal service on a competitively neutral basis.

In the Universal Service Order released May 8, 1997, pursuant to section 254(b)(7) and consistent with the Joint Board's recommendation, the Commission established "competitive neutrality " as an additional principle upon which it will base policies for the preservation and advancement of universal service.[38] In that order, the Commission stated that "...competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage one provider over another, and neither unfairly favor nor disfavor one technology over another."[39] Unless the Commission changes its rule to preclude incumbent LECs from treating universal service fund contributions as an exogenous cost, it will be violating its own recently

---

[38]In the Matter of Federal State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, released May 8, 1997, (Universal Service Order) at ¶47.

[39]Id.

adopted universal service principle of "competitive neutrality," and consequently, skewing the competitive local playing field in favor of incumbent LECs, because only they will be assured of recovery of these costs from their customers.

The current rule, which permits exogenous treatment of universal service contributions of incumbent LEC universal service obligations simply violates the 1996 Act which requires that universal service subsidies be made explicit.[40] Permitting incumbent LECs to effectively collect these monies from their IXC customers by permitting them to be buried in access charges is an entirely new implicit subsidy. Furthermore, by artificially inflating the cost of long distance services, the order takes steps which run counter to its stated goal of making the access system more economically rational.

C. Universal Service Fund Recipients must Use Funds to Reduce Interstate Revenue Requirement

The Puerto Rico Telephone Company (PRTC) requests that the Commission reconsider the First Report and Order to the extent that it requires carriers to apply any universal service support it receives from the federal fund to the reduction of its interstate access charge revenue requirements.[41] PRTC argues that incumbent LECs should be permitted to apply such universal

---

[40]See 47 U.S.C. 254(e). While the Commission relies on an interpretation of the 1996 Act which would not require elimination of the implicit subsidies in interstate access immediately, it recognizes that where the subsidies can be identified, they should ultimately be eliminated. First Report and Order at ¶15. Regardless of whether the Commission's interpretation of the Act, that implicit subsidies need not be eliminated immediately as long as a plan to remove them is in place is correct, the exogenous treatment of universal service contributions does not even meet this test, as it is not a transition but an entirely new implicit subsidy.

[41]PRTC Petition at 1.